

Message Text

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ACTION DLOS-09

INFO OCT-01 ISO-00 AF-10 ARA-14 EA-12 EUR-12 NEA-11
ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-04
SOE-02 DOE-15 FMC-02 TRSE-00 H-02 INR-10 INT-05
IO-14 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02 OES-07
OMB-01 PA-02 PM-05 SP-02 SS-15 ICA-20 OIC-02
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TO SECSTATE WASHDC 9394
LOS COLLECTIVE
AMEMBASSY KATHMANDU
AMEMBASSY SUVA

UNCLAS SECTION 01 OF 03 GENEVA 07062

E.O. 11652: N/A
TAGS: PLOS
SUBJECT: LOS CONFERENCE - WEEKLY SUMMARY, APRIL 17-21

BEGIN SUMMARY: IMPORTANT AND CONTENTIOUS DEEP SEABED
ISSUES WERE REVIEWED IN THE SEVERAL FIRST COMMITTEE
NEGOTIATION GROUPS. THE SECOND COMMITTEE GROUPS DISCUSSED
UNDER WHAT MODALITIES THE LAND-LOCKED AND GEOGRAPHICALLY
DISADVANTAGED STATES (LL/GDS) MIGHT HAVE ACCESS TO LIVING
RESOURCES IN THE PROPOSED ECONOMIC ZONE. IN ADDITION, THE
CONTINENTAL SHELF, DISPUTE SETTLEMENT IN THE ECONOMIC ZONE
AND THE DELIMITATION OF MARITIME BOUNDARIES WERE NEGOTIATED.
U.S. AND FRENCH IMPROVEMENTS TO THE POLLUTION TEXT WERE
PRESENTED IN THE THIRD COMMITTEE GROUPS. END SUMMARY.

1. COMMITTEE I - DEEP SEABED ISSUES - NG-1 CHAIRMAN
NJENGA ISSUED A PERSONAL RE-DRAFT OF ARTICLE 151 (FUNCTIONS
OF THE AUTHORITY) THAT COULD BE A USEFUL CONTRIBUTION
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TOWARD MAKING NECESSARY IMPROVEMENTS IN THE ICNT. THE
ARTICLE WAS RE-WRITTEN AS A RESULT OF DISCUSSIONS IN A
SMALL WORKING GROUP BUT HAS NOT YET BEEN REVIEWED BY THE
FULL NG-1.

2. ON THE THORNY TRANSFER OF TECHNOLOGY (TOT) ISSUE, THE
WEEK'S EFFORTS CONCENTRATED ON TRYING TO DISPEL DEVELOPING

COUNTRIES' CONCERNS ABOUT ACTUAL TOT "MECHANICS." IN THIS REGARD, THE EUROPEAN ECONOMIC COMMUNITY (EEC) PROPOSED THAT A CONTRACTOR BE REQUIRED TO NEGOTIATE TOT WITH THE INTERNATIONAL SEABED AUTHORITY IN GOOD FAITH, WITH THE PROCESS SUBJECT TO CONCILIATION SHOULD DISAGREEMENTS ARISE. THE U.S. SUPPORTED THIS REASONABLE PROPOSAL AS A START TOWARD A SYSTEM TO ACCOMMODATE BOTH THE GENERAL INTERESTS

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OF THE INTERNATIONAL COMMUNITY AND TO PROTECT THE SPECIFIC RIGHTS OF PRIVATE CONTRACTORS AND STATE ENTITIES. SPOKESMEN AMONG THE G-77 TRIED TO RAISE THE BIDDING BY RESPONDING THAT TOT SHOULD BE GUARANTEED TO DEVELOPING COUNTRIES DIRECTLY AS WELL AS TO THE AUTHORITY.

3. THE WEEK'S MEETINGS ON ANNEX II (BASIC CONDITIONS OF EXPLORATION AND EXPLOITATION) PRODUCED ONLY A REPETITION OF ESTABLISHED POSITIONS. MANY AMONG THE G-77 CLAIM THEY CONTINUE TO VIEW THE ENTERPRISE - THE OPERATING ARM OF THE INTERNATIONAL AUTHORITY - AS A FAVORED ENTITY SUPPORTED BY THE AUTHORITY, WHICH WILL ULTIMATELY MINE THE SEABED ALONE AFTER A "TRANSITIONAL" PERIOD OF TWENTY OR TWENTY-FIVE YEARS. THE DEVELOPED COUNTRIES, AND MANY OF THE MORE REALISTIC AMONG THE G-77, VIEW THE ENTERPRISE AS AN ENDEAVOR WHICH MUST BECOME AN ECONOMIC SUCCESS AS A SELF-

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SUSTAINING ENTITY WITH ALL THE NECESSARY SELF-DISCIPLINE AND MANAGERIAL SKILLS.

4. AMBASSADOR KOH (SINGAPORE) HAS STARTED THE DISCUSSIONS IN NEGOTIATING GROUP 2 (NG-2) ON THE COMPLEX FINANCIAL ARRANGEMENTS THAT WILL APPLY UNDER THE INFORMAL COMPOSITE NEGOTIATING TEXT (ICNT). THE UNITED STATES, AND A NUMBER OF OTHER DEVELOPED STATES, REAFFIRMED THEIR COMMITMENT TO ASSIST IN MAKING THE ENTERPRISE WORKABLE THROUGH LOAN GUARANTEES. THIS WAS WELCOMED BY THE G-77 WHICH REMAINS CONCERNED, HOWEVER, ABOUT HAVING THIS CLEARLY "ENSURED" BUT WITHOUT MAKING THE SYSTEM SO COMPLEX AS TO HAVE "LOOPOLES". AMBASSADOR KOH DEVELOPED A USEFUL CHART WHICH DETAILS THE GENERAL PATTERN OF FINANCIAL ARRANGEMENTS THAT WILL BE APPLICABLE TO THE ENTITIES IN SEABED MINING. ON THE QUESTION OF ENTERPRISE ADMINISTRATIVE COSTS, THE G-77 MAINTAINED THAT SUCH EXPENSES SHOULD BE PAID FROM THE AUTHORITY'S GENERAL FUND BECAUSE THE ENTERPRISE IS THE OPERATING ARM OF THE AUTHORITY. THE U.S. AND OTHER DEVELOPED COUNTRIES MAINTAINED THAT THE ENTERPRISE, LIKE ANY OTHER BUSINESS, SHOULD PAY ITS OWN ADMINISTRATIVE EXPENSES.

5. THE ENGO GROUP ON INSTITUTIONAL ARRANGEMENTS (NG-3) MET AND DECIDED TO CONTINUE MEETING INFORMALLY AND THROUGH SMALL WORKING GROUPS.

6. COMMITTEE II - THE SECOND COMMITTEE ESTABLISHED THREE NEGOTIATING GROUPS ON WHAT ARE REFERRED TO AS THE REMAINING HARD-CORE ISSUES:

A. NG-4 (LL/GDS ACCESS TO LIVING RESOURCES IN THE ECONOMIC ZONE), CHAIRED BY NANDAN (FIJI);

B. NG-5 (SETTLEMENT OF DISPUTES IN THE ECONOMIC ZONE9) CHAIRED BY STAVROPOLUS (GREECE);

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C. NG-6 (THE CONTINENTAL SHELF AND REVENUE SHARING),

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CHAIRED BY SECOND COMMITTEE CHAIRMAN AGUILAR (VENEZUELA);
AND

D. NG-7 (DELIMITATION OF MARINE BOUNDARIES BETWEEN ADJACENT AND OPPOSITE STATES AND SETTLEMENT OF DISPUTES THEREON), CHAIRED BY MANNER (FINLAND).

7. NG-4 COMPLETED DISCUSSION OF THE MAJOR ITEMS ON ITS AGENDA, INCLUDING THE DEFINITION OF GDS AND WHETHER: THE LL/GDS HAVE A RIGHT OF ACCESS TO THE EEZ LIVING RESOURCES; THAT RIGHT APPLIED ONLY TO THE SURPLUS; THAT RIGHT IS PREFERENTIAL OVER THIRD STATES; THE RIGHT APPLIES EQUALLY TO DEVELOPED AND DEVELOPING LL/GDS. THE DIALOGUE BETWEEN THE COASTAL STATE GROUP AND THE LL/GDS WAS, ALTHOUGH MOSTLY RESTATEMENTS OF POSITIONS, USEFUL AS AN OUTLINE OF THE MUTUAL CONCESSIONS NECESSARY FOR AGREEMENT. CHAIRMAN NANDAN WILL NOW UNDERTAKE PRIVATE, INFORMAL CONSULTATIONS TO FIND COMPROMISE FORMULAS.

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8. THE ISSUE OF DISPUTE SETTLEMENT WITH REGARD TO THE LIVING RESOURCES OF THE ECONOMIC ZONE (ARTICLE 296) MOVED FROM GENERAL AND FORMAL DEBATE IN THE SIXTY-MEMBER NG-5 TO MORE CANDID BARGAINING IN A WORKING GROUP OF FIFTEEN. AT THE END OF THE DISCUSSIONS IN THE LARGER GROUP, COMPROMISE SEEMED POSSIBLE BASED PRIMARILY ON TWO PRINCIPLES: (1) THAT COASTAL STATE SOVEREIGN RIGHTS AND DISCRETIONARY POWERS IN THE ECONOMIC ZONE MIGHT BE SUBJECT TO THIRD-PARTY SETTLEMENT WHEN THOSE RIGHTS OR POWERS WERE ABUSED, AND (2) THAT COMPULSORY CONCILIATION, A NON-BINDING PROCEDURE, MIGHT BE MORE APPROPRIATE FOR SUCH CASES THAN BINDING ARBITRATION OR ADJUDICATION. IN THE SMALL WORKING GROUP THESE PRINCIPLES PROVED DIFFICULT OF APPLICATION. COASTAL STATES HELD TO THE POSITION THAT THIRD-PARTY SETTLEMENT CONCERNING THE ECONOMIC ZONE, EVEN A NON-BINDING ONE, SHOULD BE EXCEPTIONAL AND STRICTLY LIMITED. FOR THEM, THE CONCEPT OF ABUSE OF RIGHTS WAS TOO VAGUE; IT MIGHT PERMIT COURTS OR TRIBUNALS TO ERODE THEIR SOVEREIGN RIGHTS UNDER THE GUISE OF CORRECTING ABUSES. LAND-LOCKED AND GEOGRAPHICALLY-DISADVANTAGED STATES MAINTAINED THE OPPOSING POSITION THAT BINDING SETTLEMENT SHOULD BE REQUIRED AT LEAST WITH RESPECT TO THEIR RIGHTS IN THE ZONE. THEY WERE SUPPORTED BY JAPAN AND THE SOVIET UNION. BY FRIDAY THERE WAS NO CLEAR MOVEMENT FROM THESE POSITIONS, ALTHOUGH SEVERAL DRAFT TEXTS HAD RECEIVED SERIOUS CONSIDERATION BY BOTH SIDES.

9. IT WAS A QUIET WEEK FOR NG-7 ON THE DELIMITATION OF MARITIME ZONES BETWEEN ADJACENT AND OPPOSITE STATES. THE GROUP CONCLUDED A GENERAL DEBATE IN WHICH ONE SIDE MAINTAINED ITS INSISTENCE ON THE RULE OF EQUITY IN

BOUNDARY DELIMITATION AND THE OTHER PUSHED FOR THE RULE OF
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EQUIDISTANCE. CHAIRMAN MANNER OF FINLAND, WHO WAS ABSENT FOR THE LATTER HALF OF THE WEEK, INDICATED THAT HE WOULD CIRCULATE A DRAFT COMPROMISE ON THE BASIS OF THE DISCUSSION. PRIVATE RESPONSE TO THE DRAFT INDICATES THAT IT IS NOT ACCEPTABLE TO EITHER SIDE.

10. IN COMMITTEE THREE, THE UNITED STATES FACES A VERY DIFFICULT PROBLEM IN THE POLLUTION AND MARINE SCIENCE NEGOTIATIONS. ON THE ONE SIDE, THE UNITED STATES IS SEEKING CHANGES TO THE ICNT THAT WOULD IMPROVE THE ANTI-POLLUTION PROVISIONS AND WOULD LIBERALIZE THE NOW EXCESSIVELY-RESTRICTIVE PROVISIONS ON MARINE SCIENTIFIC RESEARCH. IN THE POLLUTION QUESTION, THERE ARE TWO IMPORTANT GROUPS ON THE OTHER SIDE. MANY OF THE DEVELOPED MARITIME COUNTRIES ARE HONESTLY CONCERNED ABOUT THE IMPLICATIONS OF POSSIBLY DIVERGENT INTERPRETATIONS AND APPLICATIONS FOR IMPEDED SEABORNE COMMERCE. SUPPORTERS OF THIS NEGATIVE STAND AMONG DEVELOPING COUNTRIES, CLAIM STRICTER ENVIRONMENTAL CONTROLS ARE A MOVE TO HAMPER THEIR OPPORTUNITY TO BECOME MARITIME STATES.

11. WITH REGARD TO MARINE SCIENTIFIC RESEARCH, THE UNITED STATES SEEKS TO LIBERALIZE THE REGIME NOW PROPOSED IN THE ICNT, BUT IS CONFRONTED BY THE AMORPHOUS FEARS OF MANY G-77 STATES THAT OFFSHORE RESEARCH WOULD AFFECT THEIR SECURITY INTERESTS.

12. DURING APRIL 17-21, THE US CONCENTRATED ON LAUNCHING ITS POLLUTION AMENDMENTS IN COMMITTEE THREE MEETINGS AND IN INFORMAL WORKING GROUPS. BECAUSE OF THE RECENT MARITIME DISASTER OF THE FRENCH COAST, FRANCE ALSO SUGGESTED A NUMBER OF CHANGES. WITH WIDESPREAD LOBBYING EFFORTS, SOME HEADWAY WAS MADE ON THESE ISSUES. THIS REMAINS A PRIORITY ITEM FOR THE US, HOWEVER, AND THE NEW
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PROPOSALS WILL BE PUSHED HARD IN THE WEEKS AHEAD.

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